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Legal DEPARTMENT

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Subject:—

Papers relating to

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C O N T E N T S.

Legal Department File No. 8. Notices/1941.

S.No.	Compilation No.	Subject	Pages.
		Notices of Intended Suits.	
1.	C.No. 8529 ~~Pg-8-41.~~	Bom. Municipal Boroughs Act, 1925 - Sec.48(2). Whether the Commissioner can impose any condition of payment of assessment while granting sanction under section and that no user of sub-soil was involved justifying levy of assessment - not in suit.	1 - 4.

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Office of the R.L.A.

It appears that the Ahmedabad Municipality proposed to lease a piece of a public street land measuring 70 sq. yards 6 sq. ft. situated to the west of the quarters for Railway staff to the Agents, Ambica Mills Co.Ltd., Ahmedabad, for providing a broad gauge siding at an annual rent of Rs.0-8-0 per sq.yd. for a period of 7 years from 10th May 1932. On the recommendation of the Collector the proposed lease was sanctioned by the Commissioner and it was ordered that the lessees should pay an annual assessment of Rs.35-8-0 to Government and an annual rent of 35-8-0 to the Ahmedabad Municipality. On the expiry of that lease the Ahmedabad Municipality again proposed to lease the land for 7 years to the same lessees on an annual rent of Rs.35-8-0 and requested the Commissioner's sanction under section 48(2) of the Bombay Municipal Boroughs Act, 1925. The proposal being similar to the revious one the Commissioner accorded his sanction to the renewal of the lease on 2nd August 1940 on the same conditions as those previously imposed viz. that the lessee should pay (1) an annual assessment of Rs.35-8-0 to Government and (2) an annualment of Rs.35-8-0 to the Ahmedabad Municipality. The Municipality has given notice of a suit contending that the Commissioner could not impose any condition of payment of assessment while granting sanction under section 48(2) and that no user of sub-soil was involved justifying levy of an assment.

2. The contention of the Municipality is misconceived. The Municipality does not seem to have been prejudiced in the least by the order of the Commissioner. The lessees are require to pay the assessment and if at all any party has any grievance it would be the lessees; but the lessees have not disputed their liability to pay the assessment. Consequently the Ahmedabad Municipality has no cause of action against Government.

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3. It is true that section 48(2) of the Municipal Boroughs Act, 1925, does not give power to the Commissioner to impose any condition while giving sanction to the lease. But the Commissioner's order in the present case does not amount in law to the imposition of any condition. The payment of rent is condition of the lease. Government has a right to levy assessment under section 48 of the Land Revenue Code read with rule 35 and rule 56(2) of the Land Revenue Rules on a street land being used for any other purpose (See R.L.A.'s opinion No. C. Munic. Dist.4/30, dated 5th March 1930 printed in the preamble of Government Resolution (Revenue Department) No. 2640, dated 28th April 1931), R.L.A.'s opinions No.5057, dated 8th October 1937 and No.4582, dated 11th May 1940). The lease of a street land as a railway siding involves, though temporary, a change in the use of land. Instead of passing a separate order regarding the payment of assessment the Commissioner has included it in the order sanctioning the lease. It does not therefore amount to an imposition of a condition under section 48(2) of the Bombay Municipal Boroughs Act, 1925, as contended by the Municipality.

4. The sub-soil of a street land vesting in a Municipality for street purposes undoubtedly belongs to Government. The Commissioner has pointed out in his letter at page 1 ante that the surface of the street land in the present case cannot be used as the Broad guage siding without the utilisation of the subsoil as well as the surface. Government could have been justified in separately demanding rent for the use of the subsoil; but that has not been done. The question whether the use of the subsoil is involved in the present case is therefore immaterial.

5. For the reasons stated above the suit if filed by the Ahmedabad Municipality would be defensible.

Sd/-. 26/9.
Remembrancer of Legal Department.

U. R. to R.D. No.8529 dated 29th September 1941.

M.V.V.
24/4.